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COMMITTEE ON THE RIGHTS OF THE CHILD

Twenty-third session

SUMMARY RECORD OF THE 609th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 25 January 2000, at 10 a.m.

Chairperson: Mr. DOEK

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of South Africa

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GE.00-40536 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 6) (continued)

Initial report of South Africa (CRC/C/51/Add.2) (HRI/CORE/1/Add.92; CRC/C/Q/SAFR/1 (list of issues), written replies of the Government of South Africa to questions raised in the list of issues (document with no symbol distributed in the meeting room))

1. At the invitation of the Chairperson, the members of the delegation of South Africa took places at the Committee table.

2. The CHAIRPERSON extended a warm welcome to the delegation of South Africa and said that, considering the suffering experienced under apartheid and its continuing effects on the country's development, it was indeed a miracle that the committee should be receiving a delegation from a democratic South Africa.

3. Mr. PAHAD (South Africa) said that the damage inflicted on his country by apartheid could not be underestimated. The resulting underdevelopment permeated South Africa's political, economic and social structures. Children had played an important role in the struggle against apartheid, and had paid a high price, sacrificing their youth for justice, freedom and liberation. In the mid-1980s the infant mortality rate had been 50 per cent, many of those deaths due to preventable diseases, while vaccination coverage in black areas had been less than 50 per cent.

4. The education system under apartheid had been characterized by underfunded, under-resourced and ill-equipped township schools. It would require time and determination for the Government and educators to correct those gross inequities.

5. Women and children had been particularly vulnerable to the impact of political violence. In one province alone, nearly 100,000 children had been displaced because of violence. Thousands had been orphaned, abused and traumatized; others had paid with their lives. Some South African children had been born in prisons because their mothers had been detained, while thousands of others had themselves been detained for no reasonable cause.

6. Despite the improvements in the lives of children since the introduction of democracy, the legacy of apartheid - two nations, one black and poor and the other white and prosperous - still posed a challenge for society. South Africa continued to call on the international community to help with its reconstruction and development process, which placed emphasis on dialogue and consultation. Many non-governmental organizations (NGOs) had participated in the preparation of the report before the Committee, attesting to the Government's belief in a partnership with civil society.

7. By ratifying the Convention on the Rights of the Child, the South African Government had committed itself to promoting the rights of children and the principles enshrined in the Convention and upheld in the South African Constitution. It created an enabling environment for child-focused service delivery through the National Programme of Action for Children in

South Africa (NPA), which had been designed by a broad-based group of child rights advocates, liberation movement activists and development workers prior to the democratic elections. After the elections the new Government had taken over the NPA for use as an instrument to implement the provisions of the Convention.

8. The NPA, in coordination with the Minister in the President's Office, approached children's issues holistically and served to "mainstream them" into the portfolio of all departments. Provincial Programmes of Action existed in all nine provinces and local Programmes of Action were being developed in some municipalities. The Government planned to intensify its work with local government authorities.

9. After ratifying the Convention, South Africa had immediately sought to bring its laws and policies into line with the Convention's provisions. During apartheid, customary law had been considered inferior to Roman-Dutch common law; however, the new constitutional dispensation had improved the status of customary law, which was being harmonized with statute law.

10. With regard to general measures of implementation, the Government of South Africa had sought to establish a partnership with civil society, generally recognized as one of the most efficient mechanisms for coordination of policies and programmes. Mechanisms introduced to give effect to its international commitments included the establishment of a Joint Monitoring Committee on the Improvement of Quality of Life for Children, Youth and Persons with Disabilities, and a national public-awareness campaign on the rights and responsibilities of children, which had included the distribution of a publication on the implementation of the Convention translated in all 11 official languages. The media were used to educate the public about the Convention and the NPA, Government departments participated actively in public awareness campaigns and the relevant reports of the Committee were distributed throughout the country.

11. Concerning the definition of the child, he said that the South African Constitution defined a child as a person under 18 years of age. As that definition was not uniformly applied in domestic legislation, efforts focused on bringing it into line with the definition of the child contained in the Convention and the Constitution. He noted, however, that the Constitution remained the supreme law of South Africa.

12. With regard to general principles, the Cabinet had approved the introduction in Parliament of the Promotion of Equality and Prevention of Unfair Discrimination Bill, which contained a specific provision relating to children.

13. In the past, the "best interests" principle contained in article 3 of the Convention had applied almost exclusively to children in divorce cases, but it was now a constitutional principle underpinning all Government policies and programmes. The current challenge was to ensure that the best interests of the child were considered in every matter by all interested parties. Its counterpart, children's participation, was a goal of the Government and State institutions. Children had actively participated in the South African Law Commission's consultations, the

review of the Child Care Act and the establishment of a juvenile justice system. The Schools Act of 1996 called for participation by children in school governing bodies, as full members with the same rights as parents and teachers to vote and express their opinions.

14. Turning to civil rights and freedoms, he said that the Promotion of Access to Information Bill shortly to be approved by Parliament gave effect to the constitutional right of access to any information held by the State. There was an ongoing programme to ensure that all schools were equipped with libraries and government and industry cooperated to provide children with access to the Internet by donating computers to schools and community centres.

15. Nevertheless, the Government was fully aware of the potential negative impact of the Internet on children and was attempting to curb its use for child pornography and other forms of exploitation of children. In that connection, the Films and Publication Act made it an offence knowingly to create, produce, import or possess a publication which contained a visual presentation of child pornography.

16. The National Directorate of Public Prosecutions, established in 1999, focused on protecting women and children against violent offences through effective prosecution of cases. The identity of a child who testified in court was not disclosed, and testimony was given using closed-circuit camera to protect the child from secondary abuse. Corporal punishment had been abolished in 1997 under the Abolition of Corporal Punishment Act; it was prohibited in schools under the South African Schools Act and in children's institutions under the Child Care Act. Guidelines had been developed for parents and teachers on alternatives to corporal punishment, and a pilot system, based on the principles of the Convention and the Constitution, had been launched to monitor the residential care facilities under the Government's responsibility.

17. Concerning family environment and alternative care, a new Maintenance Act, approved by Parliament in 1998, marked the beginning of a reform process for maintenance. It introduced a core set of principles relating to the duty of parents to support their children and provided for the extension of the court's discretion to order payment of maintenance by a respondent's employer. Family court centres had been established in six provinces to bring all courts dealing with family-related issues under the same roof, develop an appropriate atmosphere, and facilitate the provision of psychological, sociological and mediation support services. The Domestic Violence Act recognized domestic violence as a serious social evil and an obstacle to achieving gender equality and a healthy family environment. It offered protection to victims of domestic violence and enabled minors or their representatives to apply to the court directly for a protection order. The court might even refuse an alleged abuser all contact with an abused child in the best interests of the child.

18. Turning to basic health and welfare, he said that one of the biggest challenges facing the South African Government and the entire African continent was HIV/AIDS, which was having a devastating effect on the country. The Government's multi-faceted approach to HIV/AIDS included mobilizing resources, educating the public on methods of prevention and care, providing alternative care for children left orphaned by AIDS, strengthening the health care system, preventing discrimination against HIV-positive students in schools, and working with NGOs and civil society to create support networks and care centres for victims. The Government was fully committed to combating the AIDS pandemic, and in that connection, had

established a National AIDS Council to work for the effective involvement of all sectors and organizations in the implementation of HIV/AIDS-prevention programmes. The Government was also addressing the issue of male circumcision which was guaranteed as a cultural practice by the Constitution, and had developed guidelines on the prevention of morbidity and mortality in connection with circumcision procedures.

19. Regarding education, leisure and cultural activities, "Curriculum 2005" was a comprehensive plan which had been devised to reform the education system and had significantly narrowed the gap between the privileged and the underprivileged. A major goal of the Government was to reduce illiteracy within the following five years, to which end large-scale programmes were shortly to be instituted in partnership with civil society and the corporate sector. A partnership model had also been developed by the Department of Sports, Arts, Culture and Technology to ensure access to sports and cultural activities.

20. Turning to special protection measures, he said the Government recognized that the situation regarding the protection of children was unsatisfactory. In 2000 it planned to develop, together with the NPA, a comprehensive strategy on special protection measures based on a holistic approach to the protection of children. A Bill on Juvenile Justice had been drafted and would establish a new system for dealing with children accused of crimes. In the interim, limited legislative amendments had been made and a number of pilot projects had been launched in that regard.

21. The Government was committed to the protection of children against all forms of exploitation. A sexual offences and community affairs unit had been established within the National Directorate of Public Prosecutions and the 1957 Sexual Offences Act was being reviewed for conformity with the Convention. One core programme within the Government's National Crime Prevention Strategy was the Victim Empowerment Programme, which focused on re-engineering the criminal justice system in order to take the needs of victims into account.

22. South Africa had been readmitted to the International Labour Organization (ILO) after years of isolation and had played an important role in negotiating the text of the ILO Worst Forms of Child Labour Convention (No. 182) and Minimum Age Convention (No. 138). Parliament had approved the Basic Conditions of Employment Act, which prohibited the employment of children under 15 years and protected 15-18-year-old children in employment. The Constitution recognized the need to protect the rights of cultural, religious and linguistic communities. A Language-in-Education Policy was applied in schools to address the diverse language needs of South African students.

23. South Africa was a young democracy prepared to tackle the challenges involved in developing a children's rights culture. In the words of Oliver Tambo, prominent leader of the liberation struggle, true liberation would not be achieved unless children were guaranteed the right to life, happiness and free development.

24. Mrs. OUEDRAOGO thanked the delegation for an insightful initial report, whose structure complied with the Committee's reporting guidelines. However, the report lacked adequate information on the practical implementation of the Convention. It emphasized the

detrimental effect of apartheid on the child rights situation, whereas an evaluation of current policies and programmes would have been more useful to the Committee's understanding of the situation.

25. That having been said, there were many positive achievements to be noted, not least of which was article 28 of the new Constitution endowing children with special new rights, enactment of new legislation for greater harmonization of domestic laws with the Convention, establishment of the National Programme of Action and Steering Committee, and NGO involvement in many bodies.

26. She asked how the authorities intended to tackle the many tasks enumerated in the sections of the report entitled "The way forward". She inquired what share of the national budget was allocated to children's issues, as the fact that they were financed partly by the Ministry and partly by the provinces might jeopardize coordination. She also wondered what was being done to win acceptance for the changes inherent in the harmonization of customary law with the Convention and to what extent the authorities participated in the work of the Human Rights Commission.

27. As the National Programme of Action did not cover children exclusively, what were its links with the Reconstruction and Development Programme (RDP)? Concerning the definition of the child, she was disturbed by the disparity between certain age limits, and the discrimination between girls and boys inherent in others. Particularly troubling was the fact that, in a country with such a background of violence, 16 was the minimum age for application for a weapon permit, although 21 was the age of majority. Was the type of weapon they could apply for defined? Moreover, if children aged 10-14 were not treated as criminally liable, why was 10, and not 14, the age of criminal liability?

28. Not all areas of discrimination were covered by the Constitution, as the Convention required. While acknowledging the difficulties encountered, she urged the authorities to focus on reducing the remaining socioeconomic disparities, particularly between urban and rural areas. She asked how the country evaluated society's awareness of the Convention. Now that changes in attitudes to children was a subject of law, were children aware that they must also respect the rights of others? She asked what role the media had played in the dissemination of the Convention. Indeed, the Committee had learned that some media coverage of child abuse cases in South Africa had been far from protective of the children concerned.

29. Mrs. TIGERSTEDT-TÄHTELÄ asked whether customary laws were applied locally or regionally, and whether there were any clear boundaries between them and domestic legislation. Could an individual apply customary law within the family and domestic legislation in another context? She also wished to know how local budgets operated and whether the provinces and local communities received funds from the State or whether they collected taxes directly. If they received State funds, she would like to know what allocation criteria were applied and whether

organizations and NGOs, might jeopardize its partnership with civil society. The latter should be involved not only in implementation, but also in the fundamental task of policy formulation and strategy development, from the outset.

31. Mrs. KARP said that, given the myriad conflicting interests facing South Africa in its efforts to implement the Convention, it was important to bring the right balance to policy formulation. For example, it was understandable that the country wished to strengthen its traditional laws, which had long been disparaged, yet some of those laws were deleterious to children. Similarly, in the aftermath of the apartheid regime, the country was striving to attain equality and non-discrimination, yet affirmative action on behalf of some children might have the effect of discriminating against others. Owing to past experiences some children had been forced to grow up too soon, and special efforts were needed to provide them with psychological treatment and a special quality of education for their rehabilitation and normal development. She asked whether any mechanisms existed for critical assessment of corrective programmes and whether the review of traditional and other laws included a built-in review mechanism with a time-frame for systematic analysis.

32. As the Convention on the Rights of the Child encompassed economic, social and cultural rights, did the authorities intend to ratify the International Covenant on Economic, Social and Cultural Rights? She asked whether there was a public campaign to change attitudes, with regard not only to the concept of children, but to their rights as human beings. Sadly, when society spoke of human rights it did not necessarily include children. The Supreme Court had made a point of emphasizing children's rights, especially with regard to corporal punishment. She asked whether a campaign was envisaged to impress upon the public that human rights and children's rights were a cornerstone of any new society.

33. Mr. RABAH said that the mosaic of 12 languages, plethora of religions and application of customary laws in South Africa made the dissemination of the Convention difficult. He wished to know whether the country's children were aware of the main principles of the Convention, whether the Convention was taught in the schools and whether it had been translated into the country's 12 languages. He asked whether cooperation took place between the Government and NGOs, especially black NGOs, what mechanism existed for such cooperation and whether NGOs had participated in the preparation of the report. Were the best interests of the child reflected in cases taken to court or reported to the administrative departments?

34. The CHAIRPERSON, speaking in a personal capacity, asked why the National Children's Rights Committee did not have a more independent role vis-à-vis the South African Human Rights Commission. He would also like to know whether there was a clear division of responsibilities between the Inter-Ministerial Core Group and the National Programme of Action Steering Committee.

36. He would also like more information on the Promotion of Equality and Prevention of Unfair Discrimination Bill soon to be approved by Parliament. In particular, he would like to know whether children under the age of 18 were entitled to institute proceedings in an equality court on their own behalf.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 p.m.

37. Mr. PAHAD (South Africa) said he agreed with Mrs. Ouedraogo that the most significant weakness of the report was its insufficient evaluation of the difficulties encountered in implementing children's rights in South Africa. He hoped to address that issue fully in writing to the Committee in the near future.

38. Responsibility for the relationship between traditional leaders and the Government had recently been transferred from the Ministry of Provincial Affairs and Local Government to the Deputy President, giving the issue a higher profile at national level. Many problems still needed to be resolved; for example, the demarcation board was currently drawing up the boundaries of constituency areas for local government elections, prompting objections from some traditional leaders.

39. Although no specific budget was allocated to children's issues, the need for such a budget was recognized and was currently under consideration. The Cabinet had ultimate responsibility for deciding the national budget. However, before its final decision was made, the budgetary requirements of different departments were examined by a committee of ministers to determine how successfully each department was assigning priority to resource allocations. The budgets of provincial and local governments were set by the Financial and Fiscal Commission, which was independent of the central authorities. However, it had recently been decided that the funds for local governments would be provided directly by the central Government, whereas in the past those funds had been distributed to local governments by the provincial governments. The Constitution did not allow provincial governments to impose taxation, although local governments gained some income from charging for certain services.

40. Regarding the role of the media, the Government did not impose restrictions on the private sector, even though that sector did not always show sufficient sensitivity in its programming and reporting related to children. The public broadcaster had its own board, which was responsible for ensuring standards and developing policy and had made significant improvements in dealing with children's issues in a positive way. Foreign programmes, a large number of which were broadcast in South Africa, did not fall within the competence of the South African authorities. Programmes were censored only if they were considered to be exceptionally harmful.

41. The Cabinet system had recently been reorganized to improve integration between the different ministries. Six Cabinet committees had been established, in which different ministers

42. Efforts had been made to ensure that the South African Constitution covered all the provisions of the Convention. However, if the Committee provided examples of provisions that were not covered by the Constitution, he would be happy to address them.

43. The Government's policy of combating racial and gender discrimination by means of affirmative action had encountered some opposition, mostly from privileged sectors of society who were most likely to be adversely affected by the policy. However, the Government considered positive discrimination in favour of previously disadvantaged groups to be one of the most effective ways of tackling the inequalities in South African society.

44. Ms. MKHWANAZI-XALUVA (South Africa), replying to a question by Mr. Rabah, said that the average 10-year-old in South Africa was probably not aware of the Convention or of the general principle of children's rights. A campaign was under way to initiate debate at the local community level on the rights of the child, which for many people was an alien concept. Civil society was involved in the campaign: the Government worked closely with the National Children's Rights Committee, which acted as an umbrella for NGOs and community-based organizations working with children. Such organizations were often in a better position than the Government to carry out campaigns at the grass-roots level. A national children's day had been instituted in November 1999 and had received extensive media coverage. It had represented a small but important step in the long process of raising awareness of the issue of children's rights, especially in rural areas.

45. Ms. SWEPAUL (South Africa) said that customary law had been marginalized in the past but was now enshrined in the Constitution. Legislation had been enacted allowing a court to take judicial notice of customary law, provided that it was not in conflict with the principles of public policy or natural justice. The South African Law Commission had begun an investigation into customary law and had produced a discussion paper addressing issues in that area. One of the most important points in the paper was that some customary laws could now be placed on the statute book. Other aspects of customary law were discriminatory; new laws could now be enacted to remedy such problems. The Commission's research included consultations with traditional leaders on the subject of customary law.

46. While acknowledging the discrepancies in the definition of the child in South African law, she pointed out that the minimum age for possession of a firearm or weapon was now 18 and not 16. As required by the Convention, the Constitution defined the child as a person under 18, which was the guiding principle for all reform legislation. The age of criminal responsibility was a topic of much discussion and the Law Commission had held an international conference on the subject. The setting of the age of criminal responsibility at 10 years old had been based on the conclusions of that conference. Discretion was to be exercised with regard to children aged between 10 and 14: the burden of proof of responsibility rested with the prosecution. However, she hoped that serious consideration would be given to the Committee's

programmes and others were being taken into account in the drafting of the juvenile justice bill. The cost implications of the bill had also been evaluated so as to encourage the allocation of resources for its implementation.

48. The principle of the best interests of the child, previously applied only in divorce cases referred to the courts, had been enshrined in the Constitution for the first time. With regard to sexual consent, she said that the Sexual Offences Act would shortly be rescinded and replaced by new legislation. The Government had signed the International Covenant on Economic, Social and Cultural Rights in 1994, and Parliament was in the process of ratifying it. Finally, pursuant to the new Domestic Violence Act, which had come into force in December 1999, a child could apply for a protection order without assistance.

49. Ms. KEMP (South Africa), referring to the promotion of children's rights in school curricula, said that the Curriculum 2005's Life Orientation learning area contained a specific human rights principle: to demonstrate value and respect for human rights as reflected in Ubuntu and other similar philosophies. Similar programmes were being developed under all eight learning areas of Curriculum 2005 at the primary education stage. Plans were also being made for the provision of training in middle and secondary schools.

50. Mrs. DAVIDS said that NGOs and civil society in general participated extensively in policy-making and were involved in the legislative process. Local government authorities also played a significant role in devising new programmes, the first of which should be launched by June 2000.

51. With regard to welfare, she said that a "Not For Profit" Act had been passed by the National Department of Welfare. In accordance with the Act, only the welfare organizations in existence for the longest period of time had to be registered. It was also important to recognize other community-based organizations and to provide them with funding so as to ensure that their voices were heard in the appropriate spheres.

52. Mrs. DE KLERK (South Africa) said that NGOs had participated very actively in the preparation of the initial report. A series of workshops had been held, in which parliamentarians and international organizations had taken part.

53. The CHAIRPERSON invited Committee members to ask follow-up questions on the first three groups of issues, followed by questions on civil rights and freedoms and family environment and alternative care.

54. Mrs. OUEDRAOGO noted the delegation's statement to the effect that budgetary funding was allocated to different provinces in accordance with certain criteria. If those criteria

communities as a matter of priority? The previous apartheid-era discrimination, which had existed in relation to housing, health and education, must be reversed for underprivileged areas if equality was to be established.

56. It had also been stated that no television censorship commission existed. She would like to know whether certain standards were nevertheless taken into account by the press, so that children's rights were not violated.

57. Concerning general measures of implementation, she noted that the South African Human Rights Commission included commissioners responsible for activities in individual provinces. However, there were appropriate staffing levels in only four of the nine national provinces. That being the case, how were children's rights taken into account in the remaining five provinces, especially in relation to the procedure for complaints by children? It had been stated that the Commission funded its own activities. However, the source of the funding was unclear: were there donor contributions in addition to government funds? It was clear from the replies that the Child Rights Committee of the South African Human Rights Commission was a coalition of NGOs, not funded by the Government. How was it represented at the local and provincial levels in relation to the coordination of promotion activities for children's programmes, and how did it cooperate with the South African Human Rights Commission and other ministries? In connection with funding, she asked whether the Government envisaged supporting the NGO initiative relating to the establishment of a budget devoted specifically to children's matters. If so, how would such a budget be established within the National Plan of Action?

58. Turning to the definition of the child, she said that the National Youth Commission Act defined young people as being between the ages of 16 and 35. Would that definition be changed in order to take account of young adolescents? If not, how would young adolescents' points of view be taken into consideration in the Commission's work? As for civil rights and freedoms, in particular respect for children's views, she asked what had been the results of the consultation process to gather the views of children on a proposed revision of the Child Care Act. Had discussions preceded any decisions taken? It had also been stated that some teachers refused to take account of children's opinions in schools and other institutions. What did the South African Government intend to do to change prevailing attitudes? Finally, did the Youth Commission help to prepare and implement the National Plan of Action for Children?

59. With regard to birth registration, reference had been made in the written reply to question 11 to mobile units designed to improve access to non-urban and rural areas. What was the frequency of the visits made by such units and, in that connection, was an information campaign planned regarding the need to register both births and deaths? Was there a need to decentralize and facilitate that process? She asked how children born out of wedlock were

disparities or de facto discrimination based on the places in which children lived. She asked what percentage of overall international cooperation assistance was allocated to children's programmes, and whether statistics on such programmes were available. Valuable lessons had been learned from evaluating the costs of legislation together with the impact of its enactment. She asked whether mechanisms existed for evaluating the implementation of legislative programmes.

61. With reference to the relationship between the media and the authorities, she suggested that South Africa should endeavour to include a media education programme in its school curriculum. With regard to affirmative action, had suitable programmes been designed to ascertain possible pitfalls and to reach the targets established? Such affirmative action raised delicate issues in relation to children in vulnerable groups, as budgetary allocations for the programmes in question might neglect the most vulnerable.

62. The delegation had stated that both NGOs and other community organizations existed in South Africa. The participation of such organizations in the implementation of the Convention was very important with a view to building a better society. Were those organizations offered support for capacity-building, to enable them to participate in policy-making and work for the best interests of children?

63. With regard to traditional practices, references had been made to male circumcision but nothing had been said about female genital mutilation. Was there a reason why girls had not been mentioned? Moreover, what programmes had been established to prevent discrimination against girls? Although the Marriage Act had been amended, polygamy and bigamy had not been prohibited. Had research been done into the effects of such marriages on children? If so, what had its findings been? The Government should be complimented on its efforts to prohibit corporal punishment in schools and juvenile justice institutions. However, it was particularly important that such punishment should be prohibited in families. If society wished to reduce the problem of violence, the necessary action must be taken at the earliest possible stage in the home.

64. The Truth and Reconciliation Commission had made a recommendation regarding police brutality, following the discovery that many deaths resulting from such brutality involved children between the ages of 13 and 21. Had anything been done to implement the recommendation in terms of rehabilitation and compensation for the victims?

The meeting rose at 1 p.m.